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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

Sally C. Purser,)	
)	DEFENDANT JOSEF BOEHM'S REPLY TO
Plaintiff,)	PLAINTIFF'S OPPOSITION TO MOTION
)	FOR A CONFERENCE REGARDING
v.)	SCHEDULING AND PLANNING
)	
Josef F. Boehm, Allen K.)	
Bolling, and Bambi Tyree,)	
)	
Defendants.)	
)	
)	
)	

CASE NO.: A05-0085 (JKS)

1. A REQUEST FOR DEADLINE EXTENSIONS WAS ANTICIPATED BY
PLAINTIFF'S COUNSEL IN THE SCHEDULING AND PLANNING CONFERENCE
REPORT AS WELL AS THE SCHEDULING AND PLANNING ORDER

On October 13, 2005, in accordance with F.R.Civ.P. 26(f), a meeting was held and attended by Mr. Darryl Jones, counsel for plaintiff and Mr. Kevin Fitzgerald, former counsel for defendant Boehm, wherein a Joint Scheduling and Planning Report was agreed upon and drafted. The Scheduling and Planning Conference Report, signed by attorney Darryl Jones, contains several passages regarding the anticipated re-scheduling of discovery deadlines as well as an acknowledgment of contested issues of liability and damages.

Boehm brings his motion for a scheduling and planning conference in good faith and pursuant to the language set forth in the Joint

1 Scheduling and Planning Conference Report and Scheduling and Planning
2 Order. On November 10, 2005 the Scheduling and Planning Order was
3 issued by this Honorable Court. *The Scheduling and Planning Order,*
4 *Further Pre-Trial Proceedings Section, subsection (2), states in*
5 *pertinent part:*

6 " Status, discovery, settlement, or other pre-
7 trial conferences will be scheduled at the
8 request of a party or at the discretion of the
9 court."

10 Additionally, the Order sets forth language in anticipation that
11 discovery deadline extensions might be warranted. *The Scheduling and*
12 *Planning Order, Discovery Section, subsection (7) reads:*

13 "If expert witness or other fact discovery is not
14 completed by the dates specified, counsel may
15 stipulate to a continuance of no more than two
16 months for completion of the same...A discovery
17 conference must be requested if more time is
18 required to complete such discovery..."

19 Counsel for Boehm is surprised by the representations and
20 personal attacks set forth by Mr. Jones in his opposition to the
21 request for a conference regarding scheduling and planning. Counsel
22 for Boehm is in no way attempting to "sandbag the plaintiff" or
23 plaintiff's attorney Mr. Jones, nor has counsel chosen to "ignore
24 deadlines and concentrate on a frivolous defense."

25 Mr. Jones recognized and anticipated the probable need for an
26 extension due to the circumstances surrounding this litigation. *The*
27 *signed Joint Scheduling and Planning Report states:*

28 "Mr. Boehm may have to seek extensions for his
responses to discovery requests, considering his
incarceration in a federal prison, which will
almost certainly serve to delay his responses,
and if need be, any verifications. Nonetheless,
the parties expect that they will be able to
agree on any such extensions". Page 3.

1 In good faith reliance on the Joint Scheduling and Planning
2 Report and Scheduling and Planning Order, Brett A. Greenfield, counsel
3 for Boehm, telephoned Mr. Jones on August 30 and 31, 2006 requesting
4 an extension of 60 days due to the extenuating health conditions of
5 Mr. Kenner. Mr. Greenfield described Mr. Kenner's health and resulting
6 office situation in painstaking detail. Mr. Jones denied Mr.
7 Greenfield's good faith request.

8
9 Quite contrary to Mr. Jones assertion that Mr. Greenfield is
10 somehow attempting to "sand bag" plaintiff and counsel is the fact
11 that Mr. Greenfield has been up front with Mr. Jones regarding the
12 need for an extension of 60 days for pre-trial deadlines. Mr. Jones
13 is aware of the circumstances but still refused to stipulate to a
14 extension request in contravention of the wording set forth in the
15 signed Joint Scheduling and Planning Report and the Scheduling and
16 Planning Order. True and correct copies of *the Joint Scheduling And*
17 *Planning Report, Exhibit "A" and the Scheduling And Planning Order,*
18 *Exhibit "B", are attached to the declaration of Brett A. Greenfield*
19 *and incorporated herein by this reference.*

20 To make matters worse, in his October 6, 2006 responsive
21 correspondence to Mr. Greenfield, Mr. Jones set forth his refusal to
22 communicate via telephone and pledged to refuse any cooperation other
23 than required under the rules and court in this matter. True and
24 correct copies of written correspondence between counsel dated
25 September 22, October 5, 6, and 13 are attached to the declaration of
26 Brett A. Greenfield as Exhibits "C", "D", "E", "F" and incorporated
27 herein by this reference.
28

1 In his October 13, 2006 correspondence, Mr. Greenfield responded
2 to Mr. Jones by referring to the potential need for a discovery
3 referee in the event that normal communications can not be restored
4 amongst counsel. The arduous and hotly contested nature of this
5 litigation obviates the need for a conference with this Honorable
6 Court in order that counsel can communicate with the Judge regarding
7 the extensive need for future discovery, scheduling and planning.

8
9 2. GOOD CAUSE IS SHOWN FOR THE SCHEDULING CONFERENCE DUE TO THE
10 EMERGENCY HEALTH CONDITION OF COUNSEL

11 Where counsel for Purser anticipated a good cause need for a
12 potential deadline extension as a result of Mr. Boehm's incarceration,
13 he likely did not anticipate the unanticipated events that have
14 occurred relating to the June 19, 2006 emergency hip replacement
15 surgery of counsel David E. Kenner.

16 The Law Offices of David Kenner substituted as counsel for
17 defendant Josef F. Boehm on May 24, 2006. At that time David Kenner
18 was a sole practitioner. It was anticipated he would immerse himself
19 in this matter as soon as he finished trial in USA v. Waknine, Case
20 No. 04-00373. That matter started trial on June 6, 2006 and finished
21 on June 13, 2006, shortly thereafter, Mr. Kenner fell and shattered
22 his hip.

23 The injury resulted in the need for emergency hip replacement
24 surgery on June 19, 2006. Other health issues were subsequently
25 implicated. He remained under supervised medical care or was otherwise
26 limited to his home until August 30, 2006. During September 2006, Mr.
27 Kenner gradually returned to his office in a full time capacity.

1 **A. Due Diligence Resulting From The Emergency**

2 Within a short time of being released from the hospital near the
3 end of June, 2006, Mr. Kenner attempted to insure limited management
4 of this case by arranging for a response to plaintiff's pending motion
5 for partial summary judgment. He contacted counsel, Brett A.
6 Greenfield on July 12, 2006. At that time Mr. Kenner was still very
7 limited as a result of his surgery and complications resulting
8 thereafter. Mr. Greenfield maintained a separate practice (Fisher &
9 Greenfield, A Partnership of Professional Law Corporations), but
10 agreed to assist.

11 On July 12, 2006, Mr. Greenfield contacted Mr. Jones via
12 telephone and notified him of Kenner's medical issues. Mr. Greenfield
13 had very little knowledge concerning this matter and had never met
14 with or spoken to Mr. Boehm at that time. Irrespective of that fact,
15 Mr. Greenfield spent substantial time and resources responding to and
16 filed the opposition pursuant to an agreed upon stipulation with Mr.
17 Jones.

18 During this time as Kenner's health continued to be a significant
19 and debilitating problem, he sought to negate other problems by
20 reaching an agreement to work with Mr. Greenfield on a full time
21 basis. An agreement was reached in early August but necessitated the
22 closing down of Mr. Greenfield's partnership, transferring files,
23 notifying clients and arranging a move to a new office with the
24 attendant problems of telephone and computer transfer and service,
25 staff hires, moving, etc. The move was complete by September 5, 2006.
26 Mr. Kenner has since returned to his practice on a full time basis and
27 has expended a great deal of time and energy getting this matter back
28 on track.

1 It is not the intention of counsel, nor has it ever been the
2 intention to cause unreasonable or unsubstantiated delays to this
3 litigation.

4 3. GOOD CAUSE IS SHOWN DUE TO THE EXTENSIVE NEED FOR DISCOVERY AND
5 DUE TO THE COMPLEXITY OF THE CASE

6 A. File Materials

7 In addition to the aforementioned unanticipated delay, Boehm's
8 counsel received discovery in the form of 14 banker's boxes of
9 documents from prior counsel encompassing a combination of the entire
10 criminal matter as well as three civil matters. The boxes were not
11 received by Mr. Kenner's office until the first week of August, 2006.
12 As set forth above, counsel was not able to begin inspection of the
13 documents until September 5, 2006.

14 In six short weeks Boehm's counsel has 1) indexed the
15 entire set of documents, 2) Scanned every page, 3) saved all of the
16 documents in pdf format, 4) converted the documents to OCR format
17 (optical character recognition), 5) formatted the documents into a
18 T.I.F. (tagged image file format) image file, and 6) imported the
19 documents into a laser fiche database.

20 B. Complexity Of Action and Continued Due Diligence

21 Mr. Jones states "this case does not involve complex legal
22 issues, being simply a complaint to recover damages for conduct that
23 Boehm has already admitted he committed." This statement directly
24 contradicts his representations set forth in the signed Joint
25 Scheduling and Planning Report which states in pertinent part:

26 "The parties expect there to be significant
27 contested issues of both fact and law, including
28 issues of defendant Boehm's liability on
plaintiff's claims." Page 2

1 "Finally, there will be contested issues
2 concerning damages related to Boehm's relative
3 culpability, if any, as well as based upon the
4 fact that pursuant to the resolution of the
5 criminal case as restitution fund established by
6 defendant Boehm in the amount of \$1.2 million was
7 to compensate the "victims," including plaintiff
8 Sally C. Purser." Page 2-3

9 Mr. Jones goes on to state in his opposition that Boehm has not
10 produced a shred of evidence in his defense ignoring the fact that Mr.
11 Jones has failed to initiate any discovery other than requests limited
12 to Boehm's finances. It should also be noted that Ms. Purser has
13 failed to present the required evidence of damages in order to collect
14 a portion of the restitution fund.

15 This case is extremely complex. It is anticipated that Boehm's
16 counsel will need to take as many as twenty depositions, including
17 party depositions, witness depositions and expert depositions. Many
18 of the witness locations are currently unknown to Boehm's counsel.
19 Furthermore, some of the witnesses are incarcerated throughout the
20 United States, creating an obvious hurdle with respect to gaining
21 access to the correctional facilities for the purpose of
22 communications and the setting and taking of depositions.

23 In addition, Plaintiff has put her psychological and
24 physiological well being at issue obviating the need for a
25 psychological evaluation of Plaintiff with Boehm's expert Mark Mills,
26 M.D.. This will certainly create a need for expert depositions and
27 reports. In addition, Plaintiff has retained the services of an
28 economist for the purpose of proving damages. Defendant Boehm is in
29 the process of retaining an expert economist for the purpose of
30 analyzing plaintiff's claims.

1 Boehm is incarcerated in a federal prison located in Victorville,
2 California approximately 100 miles from his counsel's office. In order
3 for counsel to meet with Mr. Boehm they must spend upwards of five
4 hours in driving time and an hour of processing time to see Mr. Boehm
5 for a few hours per visit. Both Mr. Kenner and Mr. Greenfield have
6 made at least six visits in the last six weeks in order to effectively
7 prepare and present a defense in all three civil matters.

8 Mr. Jones has indicated his desire to depose Mr. Boehm and Mr.
9 Bolling which will result in a lengthy process of getting counsel
10 admitted to the separate correctional facilities as well as a
11 certified court reporter and additional counsel who also desire to
12 participate.

13 In order to effectively defend this matter and move litigation
14 in a expeditious manner Boehm's counsel has retained the services of
15 local counsel Pam Sullivan of Wade, Kelly & Sullivan. Boehm's counsel
16 have been extremely diligent in preparing and defending this matter
17 ever since Mr. Kenner's return to the office in early September and
18 his association with Mr. Greenfield. Specifically, since September 5,
19 2006, Mr. Kenner's firm has performed the following work:

- 21 1. Propounded an initial set of
Interrogatories;
- 22 2. Propounded an initial demand for
production of documents;
- 23 3. Filed an opposition to plaintiff's motion
for partial summary judgment;
- 24 4. Filed a motion to set aside the order for
partial summary judgment;
- 25 5. Filed a reply brief to plaintiff's
opposition to motion to set aside the partial
26 summary judgment order;
- 27 6. Filed an opposition to plaintiff's motion
to freeze assets;
- 28 7. Filed the instant motion for a scheduling
conference;
8. Filed a reply brief to plaintiff's

1 opposition to the instant motion;

2 9. Responded to plaintiff's initial set of
interrogatories;

3 10. Responded to plaintiff's initial set of
requests for admission;

4 11. Responded to plaintiff's initial set of
demands for production of documents;

5 12. corresponded with plaintiff's counsel
via telephone on several occasions;

6 13. Corresponded with plaintiff's counsel
via written correspondence several occasions;

7 14. Reviewed, indexed and converted 14
bankers boxes of discovery documentation into
laser fiche;

8 15. Spent six full days traveling to and
visiting with client;

9 16. Retained expert Mark Mills, M.D. for the
purpose of analyzing plaintiff's psychological
and physiological claims;

10 17. Retained local counsel Pam Sullivan of
Wade, Kelly & Sullivan in order to expedite
discovery and litigation;

11 18. Identified over twenty witnesses for the
purpose of depositions and further discovery;

12 19. Began the process of investigating the
location of witnesses;

13 20. Began the process of gaining access
to federal penitentiaries where some of the
witnesses reside.

14 Counsel is working at a feverish pace to effectively represent
15 and defend Mr. Boehm in this action as well as two additional civil
16 matters. The need for extensive discovery is obvious as is the need
17 for an extension of time due to the aforementioned delays which were
18 out of the control of Boehm's counsel. It is not the intention of
19 counsel to "sand bag" plaintiff's counsel nor seek unnecessary delays.
20 Mr. Jones has been made well aware of the situation and need for
21 extension.
22

23 Boehm has shown good cause for an order granting his motion and
24 allowing a conference regarding scheduling and planning.
25

26 **4. CONCLUSION**

27 For the foregoing reasons, defendant respectfully requests that
28 this Court grant his motion and order a conference regarding

1 scheduling and planning.
2
3

4 October 19, 2006

KENNER LAW FIRM, P.C.

5
6 By: 

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5
6 IN THE UNITED STATES DISTRICT COURT DISTRICT OF ALASKA

7
8 Sally C. Purser,) CASE NO.: A05-0085
9)
Plaintiff,) CERTIFICATE OF SERVICE
10) DATE: October 19, 2006
v.)
11 Josef F. Boehm, Allen K. Bolling,)
12 Leslie J. Williams, Jr. and Bambi)
Tyree,)
13 Defendants.)
14)

15 This is to Certify that on or about October 19, 2006, a true and
16 correct copy of the attached documents were caused to be mailed to the
17 following parties of record:

18
19 Allen K. Bolling
Inmate No: 14911-006
20 USP Terre Haute
U.S. Penitentiary
21 P.O. Box 12015
Terre Haute, IN 47801
22 C.M. 7002 2410 0006 6742 2188

23 The following parties were served electronically on October 19, 2006:

24 **Darryl L. Jones**
lodj.federalnotices@yahoo.com
25
26
27
28

1
2 **Mary L. Pate**

3 mary.pate@egpalaska.com
4
5
6

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